

UKIP PARLIAMENTARY RESOURCE UNIT

Renewing British Democracy



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Executive Summary

Britain was one of the first countries in the world to develop representative democracy. Our legislature has served as the model for countries across the world.

Today, British democracy needs to be repaired:

- A constitutional convention is necessary to lay the groundwork for a wide-ranging, comprehensive, and broadly supported constitutional settlement.
- The composition and role of the House of Lords should be reviewed and remedied.
- New opportunities for direct democracy, in light of the possibilities enabled by the digital revolution, should be considered.
- A fairer devolution settlement, entailing equality for all parts of the UK, should be introduced.

In addition, immediate action needs to be taken to ensure the integrity of the ballot. Honesty and fairness, rather than convenience, need to be restored as the primary considerations in determining how voters cast their ballots.

I. The Democratic Deficit

1. Britain's unelected legislature

Britain is almost unique in the democratic world in maintaining a legislative chamber with no democratic representation whatsoever. The House of Lords, though limited in power relative to the House of Commons, retains a significant influence in the legislative process despite being entirely unaccountable to the people. Although successive governments have stated their intention to reform the Upper Chamber, there has been no significant attempt to address its lack of democratic legitimacy. Indeed, the last major reform of the House of Lords, introduced by the Blair Government in 1999, arguably undermined its legitimacy further by vastly increasing the power of political patronage to determine its membership. The current function and composition of the House of Lords cannot justifiably be maintained.

Although the House of Lords is secondary to the House of Commons, it still wields power over the legislative process. In recent years, peers have regularly defied successive governments and forced ministers to compromise or back-track on a wide range of issues. Most recently, in late 2015, the House of Lords successfully obstructed plans to introduce cuts to tax credits, arguably defying a longstanding constitutional convention whereby the upper chamber would not oppose budgetary measures in the process. The Government also traditionally comprises several Ministers from the Lords, such that several unelected appointees not only serve in the legislature but also lead departments of the executive.

Peers also impose a large financial cost on taxpayers that, in many cases, is difficult to justify. In the period February 2014 to January 2015, £21m was spent on Lords allowances and expenses, with the average peer receiving £25,826.¹ The phenomenon of peers claiming attendance allowance, but not speaking in debates, has been a recurrent issue since Tony Blair's reforms. According to research by the Electoral Reform Society, non-speaking peers alone cost taxpayers £1.3m in the 2014-15 Parliamentary session.²

The present constitution of the House of Lords not only fails to represent the people, but also lacks genuine independence from the Government. The House of Lords Act 1999, which replaced the majority of hereditary peers with appointees, further increased the power of the Prime Minister to decide who serves the upper chamber through patronage. Since there is no limit on the number of life peers appointed, the Government has enormous power to shape the membership. Consequently, the House of Lords, which currently comprises 821 members, is the only upper house of any bicameral parliament in the world to be larger than its respective lower house. The Prime Minister's power to shape the House of Lords limits

¹ <http://www.electoral-reform.org.uk/reforming-the-house-of-lords>

² <http://www.electoral-reform.org.uk/blog/unspeakable-scandal-silent-peers-house-lords>

the extent to which it is an independent check on either the House of Commons or the Government.

Scrutiny of the appointments process is limited too. The seven members of the House of Lords Commission, who vet candidates for peerages and nominate crossbenchers, are themselves appointed either by the Government, or by political parties. Several of its members are themselves peers. To the extent that the upper House is not fashioned by the Executive, therefore, it is appointed per the political patronage of Opposition parties, or effectively self-appointed.

Because peerages are awarded at the behest of the Prime Minister, there is significant opportunity for corruption. In recent years, there have been several allegations of 'cash for honours,' whereby party donors have been accused of effectively buying peerages. Even in the absence of proven corruption, the significant number of party donors and fundraisers who have gained membership of the Upper House, in addition to defeated ex-MPs and other party figures, are evidence that the current system is deeply flawed.

Opinion polling has found significant public support for substantial reform of the House of Lords. In 2015, a Survation poll for the *Daily Mirror* found overwhelming support for a root-and-branch overhaul of the Upper Chamber. The survey of 1,000 Britons found 20% wanted the Lords abolished outright. Another 29% said it should be axed and replaced with a fully-elected chamber. 17% more said the Lords should at least become a partially-elected chamber. Just 12% backed the status quo, while 23% said they did not know.³ In 2012, a YouGov poll commissioned by Unlock Democracy found that 69% of voters support a reformed House of Lords. The poll found that just 5% of voters favour the status quo – a fully appointed second chamber. The highest number of voters (33%) said they favoured a fully elected second chamber. Moreover, in the 2010 general election, the three largest parties all committed to reforming the House of Lords, yet this democratic mandate went unfulfilled.

An appointed legislature offers neither democratic legitimacy, nor accountability, independence or value for money for taxpayers. The status quo cannot be justified.

2. Regional inequality: the West Lothian question

British democracy is also undermined by the inequality of voting rights applying to MPs based on which constituent nation of the United Kingdom they represent, which facilitates a substantive danger to the democratic representation of English voters in particular. Whereas English MPs cannot vote or participate in the legislative process on matters devolved to assemblies in Scotland, Wales, and Northern Ireland, the same does not apply vice versa. The recent attempt to amend this problem, under the rubric of 'English votes for English

³ <http://www.mirror.co.uk/news/uk-news/massive-support-house-lords-reform-6167879>

laws,' still does not prevent MPs representing non-English constituencies affecting laws only applying to England. Consequently, it will remain possible, especially given the composition of the current Parliament, for non-English MPs to cast decisive votes on English only laws despite not representing a single English voter. For instance, it was widely reported that David Cameron decided against holding a vote to repeal the Hunting Act, which does not apply in Scotland, when the SNP made clear their MPs would vote against repeal. Thus the subversion of the democratic representation of English voters has not been resolved.

The inequality between English and non-English MPs has become a serious constitutional issue. The 'West Lothian Question,' so called because it was originally posed by Tam Dalyell, MP for the Scottish constituency of West Lothian, during a debate on the prospect of regional devolution in 1977, became a reality in 1998. After referenda in Scotland, Wales, and Northern Ireland in 1997 established popular support for devolution in each country, acts of Parliament created three devolved legislatures. The Scottish Parliament, which has the most substantial devolution settlement, has full legislative powers which cover areas including health, education, local government, housing, justice, policing, agriculture, the environment, tourism, economic development, and internal transport.

The recent legislation addressing the West Lothian question still stops short of resolving it. Subsequent to the findings of a commission established in 2011 to examine the West Lothian Question, and the result of the 2014 Scottish referendum, the Prime Minister announced his intention to address the West Lothian question in tandem with devolving more powers to the Scottish Parliament. To that end, the current Government introduced legislation to limit the role of Scottish, Welsh, and Northern Irish MPs in drafting English laws, which was passed in October 2015. Under the new proposals, draft legislation deemed by the Speaker to affect England exclusively is only open to English MPs at Committee stage. In addition, English provisions contained in national bills, can be vetoed by English MPs in a Grand Committee following Report Stage. However, all MPs continue to participate and vote as previously at First and Second readings, Report Stage, and Third reading, meaning that non-English MPs can still theoretically block legislation applying exclusively to England, or leverage their support for English-only bills in return for favourable legislation in other contexts. Although the new settlement addresses the West Lothian question, therefore, it does not truly resolve the fundamental problem. It can also be repealed easily by a vote, including of Scottish, Welsh and Northern Irish MPs, to change the Standing Orders of the House of Commons.

'English votes for English laws,' while an improvement on the previous situation, has only partially addressed the West Lothian question. Further reform would be necessary to restore equality of representation among the different constituent nations of the UK.

3. Unrepresentative democracy: the failings of First Past the Post

The electoral system for the House of Commons is often credited with delivering stable governments, but it does so by means of a fundamental democratic deficit. First Past the Post (FPTP) often allows one party to control a majority of seats in the House of Commons despite gaining well under half of the popular vote, as the 2015 General Election demonstrated. Moreover, as the political landscape in the UK fractures from a two-party to a multi-party system, FPTP not only effectively disenfranchises a growing portion of the population, but also no longer guarantees stable governing majorities.

Contrary to the claims of some of its proponents, FPTP is not a voting system with deep historical roots. Prior to the Redistribution of Seats Act 1885, the majority of constituencies were multi-member, meaning that the top two or three candidates would be elected. Multi-member constituencies were not entirely eliminated until the university seats were abolished in 1950. The establishment of single-member, winner-take-all electoral contests as the norm is therefore relatively modern, and should not be treated as sacrosanct.

FPTP produces results that do not truly reflect the democratic will of the people. In the May 2015 general election, UKIP took 12.6% of the national vote – but only won one of 650 seats (0.15%). Similarly, the Green Party took 3.8% of the vote, but won only one seat. By contrast, the Scottish National Party won 4.7% of the national vote and 50% of the Scottish vote, but 56 of 59 Scottish seats (8.6% of seats in Parliament). Likewise, the Conservatives won only 37% of the vote, but 51% of the seats (331). The current system tends to disadvantage small parties systematically, while exaggerating that of large corporate parties, and those with concentrated regional support. It does not, however, accurately reflect the political preferences of the electorate as a whole.

The democratic deficit is not only evident nationally, but also on a local level. In South Belfast, the SDLP candidate in 2015 broke the UK record for lowest winning share of the vote, at just 24.5%. The political preferences of the vast majority of voters in that constituency, and in many other less extreme examples, went unrepresented as a result of the electoral system.

Even voters whose selected candidate is elected are often not truly presented with a democratic choice. Many constituencies are dominated by one party to such an extent that voters have no genuine choice. MP selection is effectively undertaken by a local party committee, or central party bureaucracy, in which few, if any, local voters have any say. Consequently, general election campaigning tends to be focused on only 100 'swing' constituencies, whose voters effectively have a disproportionate influence on the national election result.

Unequal voter influence is further entrenched by the unequal sizes of electoral constituencies. Based on 2010 figures, constituency electorates range from c. 22,000 voters (Na h-Eileanan an Iar) to more than 110,000 (Isle of Wight), with the UK average 70,530. There

is also substantial regional variation: while the English average, in 2010, was 72,127, the Welsh average was 57,040. Legislation to reduce the number of MPs and redraw boundaries significantly to make constituency sizes more equal was not implemented in the last parliament, and it remains to be seen whether it will pass in this one.

Although the British people opted to retain the current system in a 2011 referendum, they were offered only a binary choice between FPTP and the Alternative Vote (AV). However, since AV is not a form of proportional representation, it fails to address the disconnect between vote share and Parliamentary seat share, arguably the key failing of FPTP. The referendum did not offer voters the option of any form of PR, even though some versions of PR that maintain a constituency link are already familiar to UK voters from devolved and European elections.

There is significant public support for some form of proportional representation. UKIP, together with the Green Party, the Liberal Democrats, Plaid Cymru, and the SNP, recently backed a petition in favour of a version of PR organised by the Electoral Reform Society and Unlock Democracy. The petition called for "a fairer, more proportional voting system, which ensures that seats in Parliament match the way people vote". By the time it was submitted to 10 Downing Street on May 18th 2015, it had attracted 477,000 signatures.⁴

The people are not only represented unfairly as a result of the current system, they have also never been presented with other options that might ensure greater democratic representation. There is clear public support for genuine consideration of a fairer, proportional voting system.

4. Facilitating fraud: the problem with postal ballots

The extension of access to postal votes by the Blair Government was ostensibly intended to increase voter turnout and enhance British democracy. Instead, it has had the opposite effect. In several instances, postal voting has been subject to serious electoral malpractice and fraud. Consequently, the postal ballot, as currently constituted, is undermining the democratic process.

The current postal voting system is a recent innovation, which should be judged according to its stated aims. Prior to 2001, postal votes were available only to those unable to attend a polling station for reasons of ill health, employment, or planned holiday away from home, and to voters resident on small islands who would need to cross water to reach a polling station. Prior to 1985, the system was even more restrictive: holidays were not a sufficient reason, and the employment criterion only applied to certain professions. Since 2001, with

⁴ <http://electoral-reform.org.uk/press-release/party-leaders-unite-call-electoral-reform>

the exception of voters in Northern Ireland, any UK voter has been entitled to request a postal vote (known as postal voting on demand) without citing a reason.

Tony Blair's Labour government ostensibly removed restrictions on postal voting in order to combat voter apathy and boost turnout. However, that has not been the actual outcome. While the number of postal votes cast in elections has grown from 764,000 in 1997 to over 6.5 million in 2015, turnout has fallen from over 70% in 1997 and every election for 50 years previously to well under 70% in every election from 2001 onwards.^{5 6 7}

Instead, the extension of postal votes has created a system that is open to abuse and increases opportunity for electoral fraud. In recent years, there have been several police inquiries into electoral fraud in postal voting. In 2005, the *Guardian* reported on police investigations into fraudulent postal votes in Woking and Birmingham. Having heard eight weeks of evidence at an election court hearing in Birmingham, Richard Mawrey QC, the election commissioner presiding, declared postal voting "an open invitation to fraud."⁸ Judge Mawrey upheld the allegations of postal fraud relating to six seats in Birmingham's local elections held in June 2004 and complained of "massive, systematic and organised fraud" that would "disgrace a banana republic."⁹

In January 2014, Woking was one of 16 local authorities identified by the Electoral Commission as areas where there appears to be a greater risk of cases of alleged electoral fraud being reported.¹⁰ The commission noted: "Despite the additional measures introduced since 2007 to improve the security of postal voting in Great Britain, some areas of the process remain less protected from potential fraud."¹¹ Nonetheless, appealing to the popularity of postal voting, the Commission stopped short of recommending restoring pre-2001 restrictions to the postal vote, stating: "Our research found that people broadly welcomed the availability of postal voting as an alternative to voting in a polling station on polling day, and they would not support restricting the availability of postal voting in Great Britain."¹²

However, election commissioner Richard Mawrey QC, disagreed, recommending that people should not be able to apply for postal votes as a matter of course. He stated: "Postal voting on demand, however many safeguards you build into it, is wide open to fraud. And it's open

⁵ Rallings, C. & Thrasher, M., *The 2015 General Election: aspects of participation and administration*, Electoral Commission, 08/2015 p.9.

⁶ Electoral Commission, *Electoral fraud in the UK: Final report and recommendations*, 01/2014 p.28.

⁷ <http://www.ukpolitical.info/Turnout45.htm>

⁸ <http://www.theguardian.com/uk/2005/mar/28/politics.election2005>

⁹ <http://www.independent.co.uk/news/uk/politics/councillors-guilty-of-postal-votes-fraud-that-would-shame-a-banana-republic-5350422.html>

¹⁰ Electoral Commission, *Electoral fraud in the UK*, p.16.

¹¹ Ibid. p.32.

¹² Ibid. p. 33.

to fraud on a scale that will make election rigging a possibility and indeed in some areas a probability."¹³

If the integrity of the ballot, rather than convenience, is the primary objective, it is difficult to maintain that the current system of postal voting is the best option.

II. Renewing democracy

1. Establish a constitutional convention

Imbalances in the way Britain is governed is often the result of the ease of amending Britain's constitution. In the absence of a codified constitution, fundamental changes only require simple Parliamentary majorities. Consequently, the longstanding principle of Parliamentary sovereignty has been eroded. In order to create a framework to correct these imbalances, a broader consensus – in the form of a constitutional convention - may be required. It may also be valuable to consider codifying Britain's constitution.

A constitutional convention would provide a framework for genuine reform of the House of Lords. While many proponents of reform support an elected House of Lords, others have advocated its abolition, or an alternative method of deciding its membership. A convention would be an appropriate venue not only to determine the composition of the House of Lords, but also to establish its legislative role relative to the House of Commons. Any settlement would require a broad consensus.

In addition to addressing imbalances that have arisen in British democracy as a result of recent constitutional reform, a constitutional convention would provide an opportunity to consider ways to increase democratic participation in light of recent technological change. As the digital revolution has transformed communication, the possibilities for greater direct democracy have grown. A constitutional convention would be an opportunity to explore ways to give voters a greater say in how they are governed through both referenda and digital means of engagement that were unavailable to previous generations.

There is substantial precedent for a constitutional convention, both internationally and in the UK. Several countries and regions have held conventions on constitutional issues, including Ireland, Iceland, and British Columbia in Canada. In the UK the Scottish Constitutional Convention preceded the creation of the Scottish Parliament in 1999. Drawing on the best examples from around the world, a UK-specific convention has considerable potential. It would need to be established on a formal basis, mindful of regional representation, ensuring each nation, as well as regions are fairly heard. This could be achieved by holding regional forums in advance of, or alongside a national convention. To

¹³ <http://www.bbc.co.uk/news/uk-politics-26520836>

be legitimate, that process would have to involve constitutional experts, local authorities and the public in decisions about the future constitutional shape of the country.

There is also growing support for a convention. In recent years, there have been calls for a constitutional convention from several sources. The Electoral Reform Society calls for “a UK-wide, citizen-led Constitutional Convention to decide the future shape of our country.”¹⁴ The House of Commons Political and Constitutional Reform Committee strongly recommended the establishment of a constitutional convention in their Fourth Report of the 2012-13 Session.¹⁵ The All-Party Parliamentary Group for Reform, established in 2014, also set out the case for a constitutional convention in their paper, *A Parliament For Reform 2015-2020*.¹⁶ In the past year, Graham Allen MP and Lord Purvis of Tweed have both introduced Private Members’ Bills to establish a constitutional convention.

A constitutional convention would also be an appropriate vehicle for exploring the merits of a codified constitution for the UK. Since the Glorious Revolution of 1688, the bedrock of the legislative British constitution has been described as the doctrine of parliamentary sovereignty, according to which the statutes passed by Parliament are the UK's supreme and final source of law. It follows that Parliament can change the constitution simply by passing new Acts of Parliament. However, with constitutional reform in recent decades, Parliament itself has undermined its own sovereignty.

The flexibility of the constitution has allowed the doctrine of Parliamentary sovereignty to be eroded. In light of the UK's membership in the European Union, and the supremacy of EU law, Parliament is arguably no longer sovereign. House of Lords reform, devolution, and the Human Rights Act 1988, which sought to enshrine in UK law rights contained in the European Convention on Human Rights, have each challenged the principle of Parliamentary sovereignty in different ways.

In light of the scale of recent constitutional change, it is worth considering whether codifying the constitution may be either beneficial or necessary in preserving both Parliamentary sovereignty and basic individual rights.

2. Make devolution fair

The current devolution settlement is unfair and undemocratic, and requires significant reform to be remedied. Under the rubric of a constitutional convention, several options should be considered to ensure that the democratic will of English voters is fairly

¹⁴ <http://www.electoral-reform.org.uk/constitutional-convention>

¹⁵ <http://www.parliament.uk/documents/commons-committees/political-and-constitutional-reform/CC-Report-FINAL-to-TSO.pdf>

¹⁶ <http://www.local.gov.uk/documents/10180/6917361/L15-79+APPG+for+reform+Devolution/891e0442-8692-4153-bf35-f12e61207508>

represented. Only giving English voters parity with their counterparts in Scotland, Wales, and Northern Ireland can resolve the West Lothian Question.

Fully addressing the inequality at the heart of the West Lothian question would need to go further than the current version of English votes for English laws, and confer greater rights on English voters to determine how they are governed. England is the only country of the UK that does not have a devolved Parliament or Assembly and English affairs are decided by the Westminster Parliament. Within England, regional devolution has only properly extended to London, where the Greater London Authority has greater powers than other English local authorities. As such, the current system is asymmetrical: while there are regional political and administrative institutions for Scotland, Wales, and Northern Ireland, there are no similar arrangements for England or for the regions of England.

Although the current devolution settlement is unrepresentative, decentralised government offers better and more representative government and merits expansion. There is considerable scope for extending devolution. The UK has the most centralised government of the G7, as measured by the proportion of revenue raised by sub-central government. In the UK, only 5 per cent of revenue is raised locally, compared with 50 per cent in Canada and 13 per cent in France. The fact that, in 2011, local authorities had over 1,300 statutory duties laid down by Parliament is a further indication of the degree of centralisation.

To rectify the current imbalance while retaining and expanding decentralisation, there needs to be equivalent devolution to England. There are several models this could follow. One option would be a federal United Kingdom, whereby powers would be distributed equally to each constituent nation of the United Kingdom. This would involve the creation of an English Parliament and devolved administration. The federal UK government would then oversee matters including external relations, macro-economic issues, border control, and defence. Another model would be to devolve many of the powers currently transferred to the Scottish Parliament locally, to English counties and cities. Alternatively, a stronger and entrenched version of English Votes for English Laws could be considered, where MPs not representing English constituencies were excluded from all stages of law-making affecting England only.

Fair devolution has the potential not only to resolve the West Lothian question but also to restore power to the people. Allowing England or English localities to enjoy the same powers as Holyrood would facilitate a drastic slimming down of central government: fewer ministers, fewer departments and less involvement in local authorities. It would mean transforming Whitehall into more of a centre of oversight and coordination, rather than direct policy making and implementation. It would facilitate diverse policymaking, tailored according to local needs.

3. Restoring representation

In order to restore genuinely representative democracy, the electoral system needs to be reformed. Instead of restricting the choice to one alternative, as the public was offered in the AV referendum, a constitutional convention should examine a wide range of options that would offer greater proportional representation, while preserving the popular constituency link.

A convention should explore various options for proportional representation used successfully both in the UK and internationally. Several models merit consideration. Elections to the German and New Zealand Parliaments, as well as the Scottish Parliament and Welsh Assembly, use the Mixed Member Proportional (MMP) voting system, which combines single-member constituencies and proportional representation, via a party list. Every voter exercises both a constituency vote and a party vote, and the system produces a parliament in which a party's share of the seats roughly mirrors its share of the overall nationwide party vote.

Another option would be the single transferable vote, whereby voters rank candidates by preference in multi-member constituencies, following which the most popular representatives are returned. Unlike MMP, STV does not rely on a central party list, although constituencies tend to be larger in order to accommodate several MPs. STV is used in elections in the Australian Senate and Northern Ireland Assembly, as well as elections at all levels in the Republic of Ireland.

A third option might be to reintroduce multi-member constituencies as per the pre-1885 model in the UK, and allow voters to exercise more than one vote. This would facilitate greater representation, while also remaining faithful to Britain's own electoral history.

Another option, showcased by UKIP at its September 2015 Doncaster Conference, would be a model known as Combined (or Total) Representation. Under this, with constituency sizes twice as large as now, votes at a general election would be used to elect both the winning candidate in each constituency, and the most highly scoring candidates for parties until each party reached a proportionate number of MPs according to its national vote share.

All of these models would ensure more proportional representation, while preserving the constituency link that facilitates scrutiny of the local effects of national policies, and preventing the increased centralisation of politics and unaccountability that results from a centrally determined party list PR system.

4. Ensuring honesty at the ballot box

The current availability of postal voting has not significantly increased voter participation, yet has increased the ability to commit, and frequency of allegations of, electoral fraud. In order to ensure fair, honest elections, the postal vote should be restricted again to its pre-1999 parameters. The integrity of the ballot should also be established as the primary consideration in determining the means by which voters cast their ballot.